

Bluth



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** General Binding Corporation

**File:** B-236062; B-236063

**Date:** October 5, 1989

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### DIGEST

The decision to set aside a procurement for small disadvantaged business is a business judgment within the broad discretion of the contracting officer which will not be questioned unless a clear showing is made that the contracting officer abused his discretion.

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### DECISION

General Binding Corporation (GBC) protests the decision to set aside for small disadvantaged business concerns an invitation for bids (IFB), identified as jacket Nos. 273-513 and 273-514, issued by the Government Printing Office (GPO), for metal looseleaf binders.

We deny the protest.

The IFB, issued June 16, 1989, was designated a small disadvantaged business (SDB) set-aside pursuant to section 843 of Public Law 100-456 102, Stat. 2026 (1989), which requires the Public Printer to establish a test program for fiscal years 1989 and 1990 to assist small and disadvantaged firms in winning printing and binding contracts required by the Department of Defense. Bid opening, scheduled for June 21, was stayed pending resolution of GBC's agency-level protest. GBC's protest was denied by the agency on June 23 and bids were opened on June 26.

At bid opening five bids were received, three of which qualified as SDBs. Award was made on June 27 to Continental Binder & Specialty Corporation. About that time GBC protested this matter to our Office.

GBC challenges the set aside on the basis that it is the only large business out of approximately 325 binder manufacturers, and, as such, the set-aside for small businesses is unfair. GBC also contends that, to its knowledge,

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it is the only domestic manufacturer of the metal ring elements used in looseleaf binders, which are manufactured in a labor surplus area. The protester contends that this set-aside therefore exceeds the intent of section 843 of Public Law 100-456, since that law was intended to provide preferential treatment to small businesses whose products are manufactured in the United States.

This procurement was set aside pursuant to a GPO directive, PPD 347.1 (Jan. 19, 1989), which implements Public Law 100-456. The SDB set-asides under this program serve a purpose similar to the small business set-asides by ensuring equitable opportunities for SDB participation in government acquisitions. GPO's SDB program applies to all one-time procurement actions, including small purchases, and certain GPO-handled term contracts. To set aside a procurement under this program the contracting officer must have a reasonable expectation that (1) offers will be obtained from at least two responsible SDB concerns and (2) award will be made at a price not exceeding the fair market value by more than 10 percent.

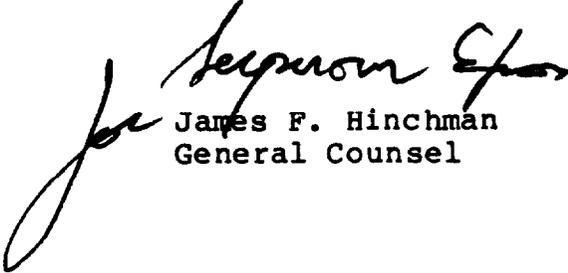
An agency's determination concerning whether to set a particular procurement aside basically involves a business decision within the broad discretion of contracting officials, and our review generally is limited to ascertaining whether those officials have abused that discretion. Bowers Envelope Co., B-233605, Feb. 15, 1989, 89-1 CPD ¶ 164. We will question a decision to set aside a procurement for an SDB only upon a clear showing that the agency abused its discretion. Alamo Acoustical Restoration Co., B-228429.2, Feb. 16, 1988, 88-1 CPD ¶ 150.

The protester does not allege that responsible SDB offerors do not exist nor does it challenge the reasonableness of the prices. Indeed, the contracting officer expected, and received acceptable offers from a sufficient number of responsible SDBs, and made award at a price which it considered reasonable. Whether or not the protester is the only firm foreclosed from the competition--which GPO denies--this does not provide any basis on which to question the set-aside determination.

Moreover, there is no requirement in the SDB program that mandates all components of products manufactured by domestic SDBs be acquired from American companies. Since the Buy American Act, 41 U.S.C. §§ 10a-d (1982), applies to this procurement, the successful bidder was required to, and did submit a domestic origin certificate which obligates it to comply with the domestic content requirement under the Act. Whether the firm actually meets its obligation is a matter

of contract administration which this Office does not review. See Autospin, Inc., B-233778, Feb. 23, 1989, 89-1 CPD ¶ 197.

The protest is denied.



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